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No. 687

In the Supreme Court of the United States

OCTOBER TERM, 1970

MORRIS I. COHEN, PETITIONER

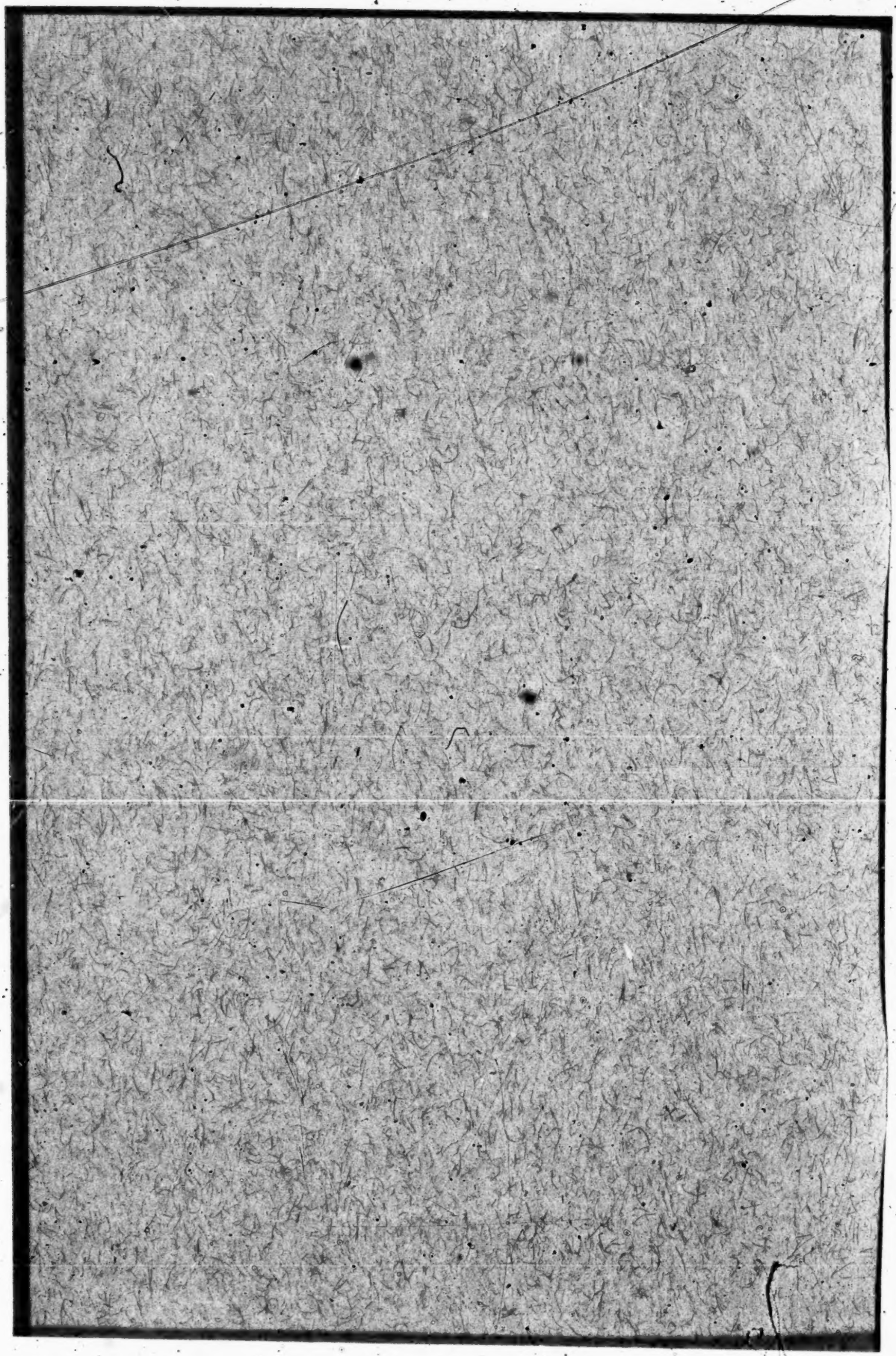
v.

JAMES T. NEAGLE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.



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MORRIS I. COHEN, PETITIONER

v.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

In August, 1967 petitioner, an attorney admitted to practice in Indiana, filed a complaint in the District Court for the Southern District of Indiana, against James T. Neagle, an agent in the Indianapolis office of the Federal Bureau of Investigation (FBI), alleging, *inter alia*, that FBI agents had wiretapped his telephone; that "he was followed and interfered with in three attempts at a vacation in 1965 and two times in 1966" by FBI agents; that FBI agents attempted "to contaminate food of plaintiff"; that the agents "by personal contact with members of plaintiff's family [have] turned said members against him"; that the agents have persuaded "persons of

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the opposite sex to conspire against plaintiff"; that since 1964 they have caused mail addressed to him to be diverted and lost; that they conspired with food purveyors to sell plaintiff food with harmful substances inserted in them; that they have followed plaintiff into many retail and service establishments; and that they have inserted "a chemical in plaintiff's gasoline tank and caused his insurance company to cancel his insurance on tow in service because of frequency of claims" (Complaint 1-2).

In the district court, petitioner filed an oral motion to dismiss his own complaint, which was granted (Pet. 6). Petitioner then appealed to the Court of Appeals for the Seventh Circuit from the district court's order granting his motion to dismiss. On motion of the defendant, that court, without a hearing, summarily dismissed the appeal, "without prejudice to any right of plaintiff-appellant to refile his causes of action" (Pet. App. A).

There is no occasion for review by this Court. Absent a showing of prejudice, a party who procures the dismissal of his own suit cannot appeal from such dismissal. See 5 Moore's *Federal Practice* ¶ 41.05[3] at p. 1068. Petitioner has not been prejudiced by the dismissal: he can refile his causes of action in the district court. Consequently, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1970.

U.S. GOVERNMENT PRINTING OFFICE 1970